IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 885 OF 1988

The State of Maharashtra. .... Appellant.

Versus.

1. Kisan Maruti Jadhav,
Age: 55, Occ.:Agriculturist.

2. Ambubai Kisan Jadhav,
Age: 45, Occ.: Household.

3. Ramdas Kisan Jadhav,
Age: 30, Occ.: Agriculturist.

4. Jaising Kisan Jadhav,
Age: 32, Occ.: Service.

5. Namdeo Pralhad Jadhav,
Age: 27, Occ.: Agriculturist. .... Respondents.

Shri I.S.Thakur, A.P.P. for the Appellant.

Shri R.S.Kate for the Respondents Nos.2 to 5.

CORAM ; SMT.RANJANA DESAI, &
ABHAY S. OKA, JJ.

DATED : 4th October, 2004.

ORAL JUDGMENT (Per Abhay S.Oka, J).

1. By this Appeal against acquittal, the State of Maharashtra has taken exception to the Judgment and order dated 1st July 1988 passed by the learned Addl. Sessions Judge, Pune. By the impugned Judgment and Order, the learned Sessions Judge acquitted the

Respondents/Accused of the offence punishable under sections 306, 498A, and 304B read with section 34 of the Indian Penal Code.

2. The deceased Padma was the eldest daughter of Dinkar Manahdeo Kale (P.W.1), who was resident of village Nimone, Taluka Shirur, District Pune. The deceased Padma was married to Accused No.3 Ramdas on 7th June 1978. The Accused No.1 is the father-in-law of the deceased Padma. The Accused No.2 is the mother-in-law of the deceased Padma. Accuse Nos.3 to 5 are the sons of Accused No.1. The case of the prosecution is that the two sons and one daughter were born to the deceased Padma. It is the case prosecution that first four to five years the life was smooth for her and thereafter the accused persons started putting forth illegal demands and were pressurising Padma to go and fetch from time to time cash amount and some articles from her father. Padma being the eldest daughter of her father, her father used to fulfil her demands. The accused demanded an oil engine for installing the same on their well. The father of Padma purchased an oil engine from his brother-in-law by paying Rs.4000/- and handed over the oil engine to the Accused. Thereafter the Accused persons compelled Padma to go to her father and bring some cash amount for them for purchasing a bullock.

With a view to prevent hardship to Padma her father spared one of his own bullock by fixing its price at Rs.900/-. The Accused No.1 took the bullock and thereafter did not bother to make payment of the price. Lastly the accused demanded a bag full of Bajra. When Padma came to her father with the said demand, her father told her that he was not in a position to supply full bag of bajra but he assured her that a full bag of bajra will be given at the time of kharip season. Therefore, Padma had to go back empty handed to her matrimonial home. On the next day her dead body was seen floating in the well situated in the farm of the Accused persons. After post-mortem dead body was handed over to the Accused persons who performed the last rites. The Police suspected some foul play and investigated the matter further.

3. The defence of the accused seems to be that they maintained Padma very well. Padma had three school going children. Their case is that they are very well off and the allegation made against them are false.

4. The learned A.P.P. submitted that the repeated demands made by the Accused to the deceased Padma have been established in evidence. He stated that when the last demand made by the accused to the deceased Padma

could not be met by her father on the next day her body was found in the well which is situated in the property of the Respondent. He pointed out that there was no reason to disbelieve the version of the father of the deceased. He also invited our attention to the postmortem notes and the nature of ante-mortem injuries found on the person of the deceased. He submitted that it was established beyond reasonable doubt that there was a demand of dowry made by the Accused to the deceased Padma and the deceased Padma was treated with cruelty. He criticized the approach of the learned Sessions Judge and submitted that the impugned judgment and order is perverse.

5. Shri Kate, the learned Counsel appearing for the Respondents supported the impugned Judgment and Order. He submitted that considering the evidence on record the case of the prosecution is not proved. He submitted that even assuming that different conclusion can be drawn from the evidence on record, no interference is permissible in an appeal against acquittal. He relied upon various Judgments to which reference will be made later on.

6. We have carefully analysed the submissions and we also gone through the evidence on record. The evidence

of P.W.1 Dinkar the father of the deceased discloses that for the first four to five years of married life, the deceased Padma led a happy life. Thereafter the Accused started making demands to deceased Padma. The first incident of demand narrated by the P.W.1 is the demand for an oil engine. He stated that when he came to know about the said demand from deceased Padma, he purchased an oil engine from his wife's brother for the price of Rs.4000/-. He stated that for a period of two years thereafter the life was very smooth for Padma. After two years Padma came to him and stated that she was being ill-treated by the Respondents and they were demanding a sum of Rs.1000/- for purchasing a pair of bullocks. He stated that at that time he was not in a position to pay the said amount. He stated that he had one extra bullock at that time. He settled the price of the Bullock in presence of Padma at Rs.900/- and the said bullock was handed over to the accused. He stated that the accused did not pay any amount for the said bullock. He admitted that after the second incident of demand of money for bullocks the Accused were treating the daughter nicely. He stated that Padma came to him a day before the incident and stated that she was subjected to ill-treatment and a demand was made by the Respondents-accused for full bag of Bajra. He stated that he told Padma that he will be in a position to give

Bajra after some time.

7. In the examination-in-chief itself P.W.1 stated that his brother conveyed to him the information that dead body of Padma was floating in the well of Accused No.1. He stated that, however, he did not go to the well at that time. At about 3.00 p.m. Police came to the village and after the Police contacted him he went towards the well and saw the dead body of Padma which was taken out of the well.

8. In the cross-examination he admitted that the Accused No.4-Jaisingh is staying at Loni-Kalbhor along with his wife and children since last 7 to 8 years and he has separated from his parents. He also admitted that the Accused No.5 was separated from his parents and was running a grocery shop. He further stated that the Accused had agreed to repay the cost of the oil engine. He denied the suggestion that the bullock was never demanded by the Accused. He admitted that he was convicted for consuming illicit liquor. He stated that till his statement was recorded by the Police, he did not narrate any of the incidents to anybody.

9. P.W.2 Ramrao is a panch witness to the scene of offence panchanama. He stated that the depth of the

well was 45 feet and there was a water in the well upto the height of 10 to 15 feet and the oil engine was installed on the well for drawing water for irrigation and drinking purpose.

10. P.W.2 further stated that two years prior to the incident he was called by P.W.1 Dinkar to his house when deceased Padma was present at that time. The witness further stated that P.W.1 informed him that Padma was demanding some cash amount for purchasing bullock. P.W.1 stated at that time that he was not in a position to pay the said amount to him. According to P.W.2, P.W.1 informed him that he was desirous of giving his own bullock and therefore, he requested P.W.2 to settle the price of the bullock which was to be given to Accused No.1. He stated that the price was fixed at Rs.900/- and Accused No.1 thereafter took the bullock and the Accused No.1 was supposed to pay the price of the bullock. At that time he did not pay anything before him. In the cross-examination he stated that the well was an old well and there were steps to get into the said well on the northern side. He stated that on the mouth of the well the stones are arranged in a sloping condition in the tapering shape till the water level. He admitted that at some places inside wall is protruding.

11. P.W.3 is Bhagchand Kale who deposed that he was called by P.W.1 Dinkar. He stated that at that time Ramrao Kale and Accused No.1 were present. He stated that a sum of Rs.1000/- was demanded by Padma for her father-in-law and P.W.1 was unable to pay the said amount. He stated that P.W.1 handed over his bullock to Accused No.1 and the price of the bullock was fixed at Rs.900/-.

12. P.W.4 is Dr.Machindra Sonalkar who performed the postmortem examination on the body of the deceased. In the examination-in-chief he stated the nature of ante-mortem injuries on the body. The injuries consist of mostly abrasions. There is one C.L.W. over right front temporal region having size 1" x 1-1/2". In the cross-examination the witness admitted that if a person falls in the well having rough and protruding boundary wall, the injuries referred to in the postmortem report are not possible at one time but the injuries on the frontal region are possible.

13. P.W.5 is PSI Shankar Shivaji Jadhav who was at the relevant time attached to Shirur Police Station. He investigated the offence by recording statements of various witnesses. In the cross-examination he stated

that the village Nimore is at a distance of 2 kms. from the well. He stated that the well is not constructed and it is uneven in shape.

14. P.W.6 Pandurang Salage is a Police Officer who recorded the missing report given by Accused No.1 at Shirur Police Station on 12th October 1987. He stated that the Accused No.1 informed him that there was a domestic quarrel between the deceased Padma and her husband on 10th October 1987.

15. Analysis of the evidence indicates that for the first four to five years after her marriage, the deceased Padma had no complaint about the ill-treatment at the hands of the Accused. The case of P.W.1 is that he purchased oil engine from his brother-in-law for a sum of Rs.4000/- It is pertinent to note that the prosecution has neither examined his brother-in-law nor produced any documents to show that the oil engine was purchased by P.W.1 from his brother-in-law.

16. In so far as the controversy regarding the bullock is concerned, it must be noted that it is the specific case of P.W.1 that his bullock was handed over to the Respondent No.1 after fixing price at Rs.900/-. His grievance is Respondent No.1 has not paid the price of

the bullock. It must be noted here that even in case of oil engine, the case of P.W.1 is that the amount of price of the engine was not paid to him by the accused. The third and last incident of demand is one bag of bajra a day prior to the incident. It is pertinent that P.W.1 has not at all stated that who amongst the Respondents ill-treated deceased Padma. The deposition of P.W.1 shows that in so far as the alleged cruelty is concerned, he has not specified particular instances of cruelty narrated to him by his daughter. It is thus clear that there is hardly any evidence of any cruelty to his daughter. In so far as the abetment to commit suicide is concerned, there is no evidence at all. P.W.1 in his cross-examination admitted that even after he was informed that the dead body of his daughter Padma was floating in well, he did not go towards the well. Only in the afternoon when the Police came, he went to the site of incident where he saw body of Padma. As against this, on earlier day the Accused No.1 had filed a F.I.R. complaining that his daughter-in-law was missing. So far as the handing over of bullock is concerned, it is the case of the Respondents that none of them demanded any bullock nor the same was supplied to them. On the contrary the case of P.W.1 is that the price of the bullock was fixed at Rs.900/- in presence of Respondent No.1 who agreed to pay the same.

Considering the nature of evidence of P.W.1 it is very difficult to come to the conclusion that offences punishable under section 306, 482-A, and 304-B read with section 34 of the IPC have been proved beyond reasonable doubt.

17. We are, therefore, of the view that the conclusions which are drawn by the learned Sessions Judge are possible conclusions which can be drawn on the basis of evidence. Even if it is assumed that it is possible to take some other view of the matter, it is not at all a ground for interference in an appeal against acquittal. Therefore, the Appeal against acquittal stands dismissed.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)